

AMENDED IN SENATE JULY 14, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY MARCH 9, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 11

Introduced by Assembly Member De Leon
(Coauthors: Assembly Members Beall, Carter, Eng, Evans, Hill,
Jones, Lieu, and Salas)
(Coauthor: Senator DeSaulnier)

December 1, 2008

~~An act relating to taxation.~~ *An act to add Section 24458 to the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 11, as amended, De Leon. Corporate reorganization: built-in losses.

The Corporation Tax Law, in specified conformity to federal income tax laws, imposes certain limitations on the use of built-in losses in conjunction with corporate reorganizations.

This bill would clarify that a specified federal administrative notice relating to those limitations does not apply for purposes of ~~California law~~ *taxes imposed under the Corporation Tax Law, as specified.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 24458 is added to the Revenue and*
2 *Taxation Code, to read:*

3 24458. *Internal Revenue Service Notice 2008–83, 2008–42*
4 *I.R.B. 905, issued on October 20, 2008, relating to the treatment*
5 *of deductions under Section 382(h) of the Internal Revenue Code*
6 *following an ownership change, shall not be applicable for*
7 *purposes of taxes imposed under Part 11 (commencing with Section*
8 23001) *of Division 2, of this code with respect to any ownership*
9 *change occurring at any time.*

10 *SEC. 2. This act is an urgency statute necessary for the*
11 *immediate preservation of the public peace, health, or safety within*
12 *the meaning of Article IV of the Constitution and shall go into*
13 *immediate effect. The facts constituting the necessity are:*

14 *In order to timely clarify the estimated state tax revenues for*
15 *purposes of the current budget crisis, it is necessary that this act*
16 *go into effect immediately.*

17 ~~SECTION 1.—(a) The Legislature finds and declares the~~
18 ~~following:~~

19 ~~(1) The Personal Income Tax Law (Part 10 (commencing with~~
20 ~~Section 17001) of Division 2 of the Revenue and Taxation Code)~~
21 ~~and the Corporation Tax Law (Part 11 (commencing with Section~~
22 ~~23001) of Division 2 of the Revenue and Taxation Code) provide~~
23 ~~for specified conformity to various referenced provisions of the~~
24 ~~federal Internal Revenue Code, as enacted as of a specified date.~~

25 ~~(2) Those laws provide that for taxable years beginning on or~~
26 ~~after January 1, 2005, the conformity date specified in California~~
27 ~~law for those referenced Internal Revenue Code sections is January~~
28 ~~1, 2005, except as otherwise specifically provided.~~

29 ~~(3) Included among the federal provisions conformed to as~~
30 ~~enacted as of January 1, 2005, are the provisions of Section 382~~
31 ~~of the Internal Revenue Code, relating to limitations on net~~
32 ~~operating loss carryforwards and certain built-in losses following~~
33 ~~ownership change.~~

34 ~~(4) As enacted as of January 1, 2005, Section 382 of the Internal~~
35 ~~Revenue Code applied to financial institutions.~~

36 ~~(5) On September 30, 2008, the Internal Revenue Service issued~~
37 ~~Notice 2008-83, 2008-42 I.R.B. 905, stating that “for purposes of~~
38 ~~section 382(h), any deduction properly allowed after an ownership~~

1 change (as defined in section 382(g)) to a bank with respect to
2 losses on loans or bad debts (including any deduction for a
3 reasonable addition to a reserve for bad debts) shall not be treated
4 as a built-in loss or a deduction that is attributable to periods before
5 the change date.”

6 (6) Notice 2008-83, which precludes the application of
7 provisions of Section 382 of the Internal Revenue Code to financial
8 institutions, constitutes a substantive change to Section 382 of the
9 Internal Revenue Code, as enacted as of January 1, 2005.

10 (7) This state conformed to Section 382 of the Internal Revenue
11 Code, as enacted as of January 1, 2005, but has not conformed to
12 any changes to Section 382 of the Internal Revenue Code set forth
13 in Notice 2008-83.

14 (8) On February 17, 2009, President Barack Obama signed the
15 American Recovery and Reinvestment Act of 2009 (Public Law
16 111-5), which in part asserts that Internal Revenue Service Notice
17 2008-83 is inconsistent with the congressional intent in enacting
18 Section 382 of the Internal Revenue Code. While questioning the
19 legal authority of Notice 2008-83, Congress grandfathered in
20 transactions that occurred after the Notice was issued and on or
21 before January 16, 2009, in order to protect the reliability of
22 guidance letters generally, and avoid punishing taxpayers that rely
23 on this guidance.

24 (9) California should not conform to the construction of Section
25 382 of the Internal Revenue Code as described in Notice 2008-83
26 inasmuch as the legality of that construction has been questioned
27 in federal statute.

28 (b) Inasmuch as the Legislature has determined that the changes
29 set forth in Notice 2008-83 are inconsistent with, and in conflict
30 with, the intent of the Legislature in conforming with Section 382
31 of the Internal Revenue Code, the Legislature makes both of the
32 following findings for purposes of the Personal Income Tax Law
33 and the Corporation Tax Law:

34 (1) Notice 2008-83, relating to the application of Section 382(h)
35 of the Internal Revenue Code to banks, and any other
36 administrative guidance issued by the Internal Revenue Service
37 after September 30, 2008, and any federal Treasury regulations
38 promulgated after September 30, 2008, which have the same or
39 similar effect regarding the application of Section 382(h) of the

- 1 ~~Internal Revenue Code to banks, shall not apply for purposes of~~
- 2 ~~the Personal Income Tax Law and the Corporation Tax Law.~~
- 3 ~~(2) Paragraph (1) shall apply to the same taxable periods to~~
- 4 ~~which any federal guidance described in that paragraph is~~
- 5 ~~applicable.~~